

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PATRICK FORSYTHE,)	Case No. ED CV 10-403-PJW
)	
Plaintiff,)	
)	MEMORANDUM OPINION AND ORDER
v.)	
)	
MICHAEL J. ASTRUE,)	
COMMISSIONER OF THE)	
SOCIAL SECURITY ADMINISTRATION,)	
)	
Defendant.)	

I. INTRODUCTION

Before the Court is Plaintiff's appeal from a decision by Defendant Social Security Administration ("the Agency"), denying his application for Supplemental Security Income ("SSI") and Disability Insurance benefits ("DIB"). Plaintiff claims that the Administrative Law Judge ("ALJ") erred when he concluded that Plaintiff had the residual functional capacity to perform certain jobs. For the reasons explained below, the Court concludes that the ALJ did not err and affirms the Agency's decision.

II. SUMMARY OF PROCEEDINGS

On February 1, 2000, Plaintiff applied for benefits, alleging an onset date of November 1, 1997. (Administrative Record ("AR") 61-63.)

1 The Agency denied the application three times. Each time, Plaintiff
2 appealed to the Appeals Council and/or this Court and each time the
3 case was sent back to the ALJ for further consideration. Most
4 recently, on September 10, 2008, the Court sent the case back to the
5 Agency for further proceedings. (AR 1287-94.) On September 15, 2009,
6 the ALJ held a new hearing, after which he again denied Plaintiff's
7 claim for benefits. (AR 1618-47, 1222-44.) Plaintiff then filed this
8 action.

9 III. DISCUSSION

10 The ALJ found that Plaintiff could perform the jobs of hospital
11 cleaner, day worker, and hand packager. Plaintiff argues that this
12 finding was inconsistent with the ALJ's residual functional capacity
13 finding. (Joint Stip. at 4-8.) For the following reasons, the Court
14 finds that remand is not warranted on this issue.

15 The ALJ found that Plaintiff had the residual functional capacity
16 to perform medium work with the following limitations:

17 [O]ccasional power gripping and torquing, no significant
18 overhead reaching, no significant exposure to hazards such
19 as unprotected heights or dangerous machinery, no
20 significant exposure to pulmonary irritants such as dust,
21 smoke, and fumes, little more than non-public simple
22 repetitive tasks.

23 (AR 1234.)

24 Based on this residual functional capacity and relying on the
25 testimony of a vocational expert, the ALJ determined that Plaintiff
26 could perform the jobs of hospital cleaner, day worker, and hand
27 packager. (AR 1243-44.) Plaintiff contends that all three jobs are
28 precluded by various limitations found by the ALJ. For instance, as

1 to the job of hospital cleaner, Plaintiff speculates that he would
2 "likely have contact with patients" when he went into their rooms to
3 clean them, which would be inconsistent with the ALJ's finding that
4 Plaintiff was capable of "little more than non-public . . . tasks."
5 (Joint Stip. at 4.) However, the Dictionary of Occupational Titles
6 ("DOT")--which is what the ALJ and the vocational expert relied on in
7 concluding that Plaintiff could perform this work--provides that the
8 cleaning performed by a hospital cleaner occurs "after dismissal of
9 patients," i.e., after they have vacated their rooms. See DOT No.
10 323.687-010. Further, the DOT lists the job as "People:8-Taking
11 Instructions-Helping N-Not Significant," meaning people skills are not
12 a significant part of the job. *Id.* Thus, it appears clear that
13 Plaintiff's limitations regarding working with people in public would
14 not preclude him from performing the job of hospital cleaner.

15 Plaintiff points out that the ALJ also limited his exposure to
16 pulmonary irritants, which would likely be present in the cleaning
17 agents Plaintiff would be using in this job. (Joint Stip. at 5.)
18 But, again, this claim is contradicted by the DOT. According to the
19 DOT, there are no toxic or caustic chemicals involved. See DOT No.
20 323.687-010. Nor are other environmental conditions present. *Id.*
21 Further, the vocational expert testified that Plaintiff could perform
22 this job--knowing that Plaintiff was restricted to an environment
23 without pulmonary irritants (AR 1645-46)--and the ALJ was entitled to
24 rely on that testimony. See *Bayliss v. Barnhart*, 427 F.3d 1211, 1218
25 (9th Cir. 2005).

26 Plaintiff argues that the vocational expert's testimony deviated
27 from the DOT and contends that the ALJ and the vocational expert
28 acknowledged as much in the record. (Joint Stip. at 7.) Plaintiff is

1 half right. Though both acknowledged a deviation, the deviation they
2 were referring to was the difference between Plaintiff's prior
3 position as a warehouse bailer, which Plaintiff performed as light to
4 medium work, and the DOT description of the job as heavy work. (AR
5 1395-96.) This deviation had nothing to do with whether Plaintiff
6 could perform the job of hospital cleaner despite his limitations.

7 For these reasons, Plaintiff's claim that the ALJ erred when he
8 concluded that Plaintiff could perform the job of hospital cleaner is
9 rejected. Further, the Court concludes that the resolution of this
10 issue is also dispositive of Plaintiff's appeal. According to the
11 vocational expert, there were 4,500 hospital cleaner jobs locally and
12 110,000 nationally. (AR 1646.) Clearly, these numbers are sufficient
13 to support the ALJ's decision that there were a significant number of
14 jobs Plaintiff could perform in the economy. *See Moncada v. Chater*,
15 60 F.3d 521, 524 (9th Cir. 1995) (holding 2,300 jobs in San Diego
16 county were a significant number); *Barker v. Sec'y of HHS*, 882 F.2d
17 1474, 1478-80 (9th Cir. 1989) (holding 1,266 jobs in local area were a
18 significant number); *Martinez v. Heckler*, 807 F.2d 771, 774-75 (9th
19 Cir. 1986) (holding 3,750 to 4,250 jobs in metropolitan area were a
20 significant number). Thus, even assuming that the ALJ erred as to the
21 other two jobs, reversal would not be warranted. *See Gray v. Comm'r*,
22 365 Fed. Appx. 60, 63 (9th Cir. 2010) (affirming ALJ's finding that
23 Plaintiff could find work because, "[e]ven assuming arguendo that two
24 of the three jobs named by the [vocational expert] . . . were
25 inconsistent with [the plaintiff's residual functional capacity]," the
26 third job was not and that was enough to support the ALJ's
27 conclusion). The Court will, however, address Plaintiff's remaining
28 claims.

1 Plaintiff argues that the ALJ erred in concluding that he was
2 capable of performing the job of "day worker" because, according to
3 the DOT, day workers "may" be required to watch kids "to keep them out
4 of mischief." (Joint Stip. at 5; see DOT No. 301.687-014.) In
5 Plaintiff's view, this job was precluded by the ALJ's finding that
6 Plaintiff could perform "'little more than non-public'" work (Joint
7 Stip. at 5), whatever that means. Plaintiff's argument here is
8 persuasive. Any job requiring Plaintiff to watch children as part of
9 it would seem to be precluded by the limitation on public contact.
10 Presumably then, the vocational expert should have reduced the number
11 of day worker jobs to eliminate the ones that require watching
12 children. Assuming this to be the case and assuming further that the
13 vocational expert failed to do so in rendering his opinion, however,
14 any error was harmless because, excluding all day worker jobs from the
15 analysis, there were enough hospital worker jobs to support the ALJ's
16 finding that Plaintiff could find work. See *Gray*, 365 Fed. Appx. at
17 63.

18 This same analysis and this same result applies to Plaintiff's
19 complaints about the ALJ's finding that Plaintiff could perform the
20 job of hand packager. Plaintiff argues that the fact that he is
21 limited to only occasional power gripping and torquing rules out this
22 job, which, according to the DOT, requires exerting 20 to 50 pounds of
23 force occasionally and 10 to 25 pounds frequently. (Joint Stip. at 5;
24 see DOT No. 920.587-018.) Plaintiff also notes that he is precluded
25 from working with "dangerous machinery" and this job requires the use
26 of a conveyor belt, which, surprisingly, at least according to one
27 company's website cited in his brief, accounts for 50 deaths a year in
28 the United States. (Joint Stip. at 7.) In Plaintiff's view, since

